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Annual Report Maine Labor Relations Board Fiscal year, 2001

Maine Labor Relations Board

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ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 2001

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Introduction

During the past year, the Board had requests for services from all segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were some fluctuations in the Board's activities compared to the previous year. The continued robustness in the state economy, resulting in the availability of additional resources to fund collective bargaining settlements, has contributed to an overall decline in demand for the Board's services this year.

In July, Governor King nominated Jared S. des Rosiers of Falmouth for appointment as an Alternate Chair of the Board, replacing Andrew M. Horton, who resigned last year to become a Judge of the Maine District Court. The nomination was confirmed by the Legislature. Employee Representative Gwendolyn Gatcomb notified Governor King in October of her intention to resign from the Board. Gwen had just completed a term as President of the Maine AFL-CIO and wanted to retire from the Board as well in order to be able to spend more time with her family and travelling in her motor home. In February, the Governor nominated Carol B. Gilmore of Charleston, to become the Employee Representative. Carol had served as Alternate Employee Representative for the last five years. At the same time, Robert L. Piccone of Portland, the President and Business Agent for Teamsters Union Local 340, was nominated to serve as an Alternate Employee Representative. Both nominations were confirmed by the Legislature. Public Chair Peter T. Dawson of Hallowell and Employer Representative Karl Dornish of Winslow continued to serve in their respective capacities throughout the year as did Alternate Chair Pamela D. Chute of Brewer, Alternate Employee Representative Wayne W. Whitney of Brunswick, Alternate Employer Representative Edwin S. Hamm of Old Orchard Beach, and Alternate Employer Representative Nelson J. Megna of Oakland.

The most significant administrative development this year was the adoption and implementation of new procedural rules for practice before the Board. The previous

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rules were adopted in 1990 and had never been amended. As noted in last year's report, the Board began considering a rule-making as a result of having held an informal forum for the public sector labor-management community, during which a wide variety of excellent suggestions were offered and discussed. The Board then conducted a formal rule-making public hearing at the end of the last fiscal year and adopted the new rules on October 20, to go into effect on January 1. The new rules simplify many of the procedural requirements for practice before the Board and they have been well received by the public sector labor-management community.

A new initiative jointly undertaken this year with the Panel of Mediators and the State Board of Arbitration and Conciliation ("BAC") is the convening of a series of seminars to discuss a variety of topics regarding public sector labor-management relations in Maine. The programs provide practitioners an opportunity to meet and discuss practical and legal issues that arise in the labor-management dispute resolution community, in addition to fostering informal interaction away from the heat of a particular dispute or bargaining situation. Three sessions were held during the course of the year. The first two programs consisted of panels of labor-management practitioners, while the latter was conducted by the primary members of the BAC. Attendees at the latter two programs were awarded 2.6 hours and 2.5 hours of continuing legal education credit, respectively, from the Board of Bar Overseers.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board continued to offer its advanced internet web site mentioned in the last three reports. This site, fully maintained and updated by Board staff, has been highly praised by the labor-management community. During the rule-making process, interested parties were able to download the proposed rules, an executive summary of the major changes being proposed, and a document describing the origin of each of the new rules. By using e-mail notices to our client community and by making the rulemaking process documents available through our web site, the Board was able to

avoid substantial duplication and distribution costs during the rule-making process. As a result of new provisions in the Board's rules, the web site now includes an electronic bulletin board, reflecting new representation filings and other activity pending before the Board.

Legislative Matters

The Board submitted one legislative proposal during the First Regular Session of the 120th Legislature. This bill, L.D. 513, An Act to Permit Grievance Mediation by the Panel of Mediators, was enacted as an emergency measure (P.L. 2001, ch. 92). The new law permits public employers and bargaining agents to agree to use the Panel of Mediators to attempt to resolve grievances at a point prior to arbitration. The availability of grievance mediation could substantially shorten the time required to resolve grievances and save the parties the cost of arbitration as well. Even if the mediation is unsuccessful in resolving the dispute, parties using the process will be better prepared for arbitration because they will already have presented and defended their respective cases to a neutral party. Under the law, the use of grievance mediation is a permissive subject of bargaining upon which the parties may, but are not required to, bargain. This means that if the parties are unable to agree upon a grievance mediation provision, neither party could lawfully insist that the issue be presented to factfinders or an interest arbitration panel.

In addition to L.D. 513, the Board also submitted two items that were incorporated in the Governor's Part II budget proposal and were ultimately funded by the Legislature. While the sum at issue was small (\$23,000 for the biennium), the funding is expected to have significant impact on the Board's program as well as those of its affiliated agencies, the Panel of Mediators and the State Board of Arbitration and Conciliation. In the early 90's, the Board and its affiliates introduced user fees as a means of continuing services in the face of substantial budget cuts. This latest modification, fine tuning the user fee system, provides funding for the boards and the panel in instances where there are no specific parties to bill; such as, rule-makings or meetings on administrative matters. In addition, the Part II funding will permit adjustment of the Board's Clerk Stenographer position from 32 to 40 hours per week. This change will enable the agency to develop a data base tracking public sector collective bargaining information.

For the first time in several sessions, no bills were introduced this year that would have had direct substantive impact on the agency or its subject matter jurisdiction. The Board staff did monitor 15 bills, attending public hearings and work sessions, and otherwise assisting Legislative committees in their consideration of matters that might have potential impact on collective bargaining or agency operations.

In addition, the executive director was involved in "negotiating" a legislative proposal among the interested parties, clarifying issues regarding the employees of the Governor Baxter School for the Deaf ("GBSD"). Chapter 775 of the Public Laws of 2000 began the process of transforming GBSD from a state agency to an instrumentality of the state, under the direction and control of a school board appointed by the Governor. The law also provided for the transition of persons who work at the Baxter School from being state employees to being employees of the School Committee. The language and structure of Ch. 775 contained several ambiguities that could have resulted in litigation before the MLRB. In preparing for the first round of collective bargaining between the employees' bargaining agents and representatives of the School Committee, the parties acknowledged the ambiguities embodied in Chapter 775 and recognized that they had differing interpretations regarding the meaning and intent of the law. In an effort to resolve the apparent ambiguities, all of the parties -- the former employer, the Executive Branch of State Government, the current employer, the School Committee, and the two bargaining agents who represent the school's employees -- agreed to meet with the executive director to attempt to reach consensus regarding the outstanding issues. Several meetings were held, compromises were made by all parties, and a consensus was reached on what became L.D. 1610, An Act to Clarify the Legal Status of Employees of the Governor Baxter School for the Deaf. The bill, which was enacted as emergency legislation and has gone into effect (P.L. 2001, ch. 239), provides a solid foundation upon which the parties can build their relationship.

Bargaining Unit and Election Matters

During fiscal year 2001, the Board received 21 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 34 of these filings in FY 00, 33 in FY 99, 39 in FY 98, and 23 in FY 97 and FY 96. Of the 21 FY 00 filings, 12 were for municipal or county government units, 5 for educational units, and 4 concerned State Executive Branch employees. The unit

agreements were filed by the following employee organizations:

Teamsters Union Local 340	6 agreements
Maine Education Association/NEA ¹	5
Maine State Employees Association	4
AFSCME Council 93	2
International Association of Fire Fighters	2
International Union of Operating Engineers	2

Ten (10) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 01: 6 were for determinations, and 4 were for clarifications. Two (2) the new unit petitions actually went to hearing. Agreements were reached in 3 cases, 2 cases were withdrawn, 1 was dismissed, and 2 are pending. Board agents conducted two (2) hearings in cases resolved this year. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 75% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 13 unit petitions filed in FY 00, 20 in FY 99, 17 in FY 98, 19 in FY 97, and 9 in FY 96. The unit determination/clarification requests were filed by the following employee organizations:

Maine Association of Police	2 petitions
Maine Education Association/NEA	2
Teamsters Union Local 340	2
Granite City Employee Association	1
City of Hallowell	1
International Union of Operating Engineers	1
Individual School Employee	1

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 01 there were 7 voluntary recognitions filed, involving the following employee organizations:

International Association of Fire Fighters	2 agreements
Maine Association of Police	2
Maine Education Association	2
AFSCME Council 93	1

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

Seven (7) bargaining agent election requests were filed in FY 01; 9 elections were actually held, including matters carried forward from FY 00, and 1 election matter is pending. The bargaining agent election petitions filed this year involved the following employee organizations:

Maine Education Association/NEA	3 petitions
International Union of Operating Engineers	2
Maine Association of Police	1
Teamsters Union Local 340	1

In FY 00, there were 12 voluntary recognitions filed, 12 bargaining agent election requests received, and 14 elections held.

In addition to representation election requests, the Board received 2 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

<u>Petitioner</u>	<u>Incumbent Agent</u>	<u>Prevailed</u>
MSAD #5 Bus Drivers Ass'n/MEA/NEA	Teamsters Union Local 340	MSAD #5 B.D.A.
Maine Association of Police	AFSCME, Council 93	Disclaimer & Vol'y Recog.

The Board received 2 straight decertification petitions in FY 01. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. Two (2) elections were actually held, including one (1) matter carried forward from FY 00. The results of the decertification petitions were as follows:

<u>Incumbent Agent</u>	<u>Outcome</u>
Teamsters Union Local 340	Teamsters
AFSCME Council 93	No Representative

There were 6 election matters carried over from FY 00. Consequently, there were 17 such matters requiring attention during the fiscal year; this compares with 30 in FY 00, 33 in FY 99, 36 in FY 98, 25 in FY 97, and 26 in FY 96.

In addition to the routine election administration activities this year, the Board's staff heard and decided two objections to election petition cases. The first dispute had

to do with the decertification/bargaining agent election for the M.S.A.D. #5 Bus Drivers' bargaining unit, involving the MSAD #5 Bus Drivers Association/MEA/NEA and Teamsters Union Local 340. The decision was appealed to the Board; but, the dispute was settled by the parties on the day of the hearing. The second case involved the petition for decertification election concerning the Winthrop School Department Bus Drivers' bargaining unit.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year decreased significantly. There were 61 new requests filed this year compared with 73 last year, 69 in FY 99, 68 in FY 98, 74 in FY 97, and 69 in FY 96. In addition to the new mediation requests received during FY 01, there were 23 matters carried over from FY 00 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 84, down from 93 in FY 00. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. The significant decline in demand experienced this year reflects external factors affecting the bargaining process--continued improvement in the regional economy and increased state aid to education. These developments facilitated the bargaining process and reduced demand for mediation.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 00, improved considerably, maintaining the trend seen last year of continuing to move upward from the record low of 50% in FY 95. This year's

settlement rate was 85.9%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 82.1% in FY 1997, with a mean of 75.46%. Anecdotal evidence from the mediators and partisan representatives suggests that the continued robust performance of the state and regional economies resulted in the availability of additional resources to fund settlements this year.

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The following employee organizations filed requests for mediation services this year:

Maine Education Association/NEA	37 requests
Teamsters Union Local 340	14
AFSCME Council 93	5
Maine State Employees Association	2
American Federation of Teachers	1
International Association of Firefighters	1
Independent School Employees Ass'n	1

The level of preventative mediation activity also declined this year. We received 5 requests for preventative mediation services, 9 sets of negotiations were completed using the technique, resulting in 6 settlements. The negotiations were continuing in the other 2 cases; therefore, the technique had a success rate of 78% this year. Last year, 10 cases were completed, resulting in 10 ratified successor collective bargaining agreements. This non-confrontational bargaining initiative is discussed in greater detail in the Annual Report of the Panel of Mediators.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2001, 13 fact-finding requests were filed. Those requests represent a slight decrease from last year's level. Six (6) petitions were withdrawn or otherwise settled, 9 requests went to hearing, and 3 petitions are pending hearing. Last year 12 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

Maine Education Association/NEA	8 requests
Teamsters Union Local 340	2
International Association of Firefighters	1
Maine Association of Police	1
Maine State Employees Association	1

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance issues are subject to interest arbitration; but, an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. One was received this year. None were filed last year, 2 in FY 99, 2 in FY 98, 1 in FY 97, 4 in FY 96, only one each in FY 95 and FY 94, and none in the preceding three years.

Although the public labor relations statutes require that arbitration awards be filed with the Board, they usually are not. This year, no interest arbitration reports were received. While we assume that there were no interest arbitration awards in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Twenty-four (24) complaints were filed in FY 01. This represents a slight decrease over the FY 00 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 19 to a high of 27, with the mean being 22.8. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 24 complaints filed in FY 01, there were 21 carryovers from FY 00, compared with 26 complaints and 12 carryovers last year. Board panels conducted 3 evidentiary hearing days involving 1 case during the year, compared with 1 in FY 00. Board members sitting singularly as prehearing officers held conferences in 14 cases, compared with 7 in FY 00. The Board issued formal Decisions and Orders in 3 cases. Four (4) cases have been continued indefinitely at the request of one or both parties. Such a continuance, or inactivity, usually indicates that the parties are attempting to resolve their differences, even though a complaint has been filed to preserve the complainants' rights, given the Board's six-month statute of limitations. Twenty-six (26) complaints were dismissed or withdrawn at the request of the parties. Six (6) complaints await prehearing and hearing; in 2 cases the Board deferred to

arbitration; 2 cases are pending Board deliberation and decision; and 2 cases are awaiting withdrawal.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints were filed by the following this year:

Maine Education Association/NEA	13 complaints
International Association of Fire Fighters	4
Teamsters Union Local 340	3
Maine State Employees Association	2
American Federation of Teachers	1
City of Biddeford	1

Appeals

No unit determination or unit clarification appeals were filed this year. As noted earlier, one election appeal was filed. The case was settled and withdrawn at hearing.

One new case involving the Board was initiated in the courts this year. In ***Troy Langley v. Maine State Employees Association***, the Board held that the bargaining agent had not violated the statutory duty of fair representation through the services it rendered to Mr. Langley in connection with the termination of his employment with the Maine Department of Transportation. Mr. Langley appealed the Board's decision and the oral argument is scheduled to be conducted in the Superior Court on July 3, 2001.

The Board was involved in one other court case this year, ***Susan Ouellette v. City of Caribou***, which was discussed in last year's report. The Court remanded the case to the Board to consider the materiality of certain testimony the City wanted the Board to hear. The Board considered the proffered evidence and the parties' relevant argument and issued a decision and order on remand on July 21, 2000, affirming its earlier decision. Subsequent to the Board's final decision, the parties negotiated a settlement to the dispute and the appeal was withdrawn.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
Unit Determination/ Clarification Requests Number filed---	9	+111% 19	-10.5% 17	+17.7 20	-35% 13	-23.1% 10
Agreements on Bargaining Unit (MLRB Form #1) Number filed---	23	-- 23	+69.6% 39	-15.4% 33	+3% 34	-38.2% 21
Voluntary Recognitions (MLRB Form #3) Number filed---	3	+66.7% 5	+40% 7	-42.9% 4	+200% 12	-41.7% 7
Bargaining Agent Election Requests Number filed---	15	+20% 18	-11.1% 16	+18.75% 19	-36.8% 12	-50% 6
Decertification Election Requests Number filed---	1	+200% 3	+167% 8	-37.5% 5	-80% 1	+100% 2
Decert./Certification Election Requests Number filed---	4	-75% 1	+100% 2	+150% 5	+20% 6	-67% 2
Mediation Requests Number filed---	69	+7.25% 74	-8.1% 68	+1.5% 69	+5.8% 73	-16.4% 61
Fact-Finding Requests Number filed---	21	-33.33% 14	+35.7% 19	+15.8% 22	-31.8% 15	-13.3% 13
Prohibited Practice Complaints Number filed---	27	-18.5% 22	-9.1% 20	-5% 19	+36.8 26	-7.7% 24

The above table indicates that the demand for the Board's different services

varied during the fiscal year. The decline in organizational activity this year may be an indication that such activity is nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. On the other hand, although the rate of increase has declined, there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 01, public sector labor-management relations in Maine continued to mature. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services, and the continued willingness of parties to settle prohibited practice cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 29th day of June, 2001.

Respectfully submitted,

A handwritten signature in dark ink, reading "Marc P. Ayotte". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Marc P. Ayotte
Executive Director
Maine Labor Relations Board